

FRANCIS E. H. MALBYE.

Mr. Phillips said that the plaintiff in the action sent for \$771.80 for money received by the defendant by his complicity with him; and in fact, both had absconded and fled (laughter).

Mr. Phillips thought there was a difficulty in this case. The application for substitution of service was headed E. H. Malbye and others instead of E. H. Malbye, trading under the style of Dunn, Malbye, and Co., and himself, the partners.

The court ordered to settle jurisdiction the plaintiff must find that one of the partners was within the jurisdiction of this Court; else he could not get judgment. If plaintiff was in the position to prove that, the case would go on.

Mr. Phillips understood it would be impossible to do so.

His Lordship rather faded; that the substituted service was obtained under an affidavit which was not correct. He meant if it could be shown that the information was founded on a proper assumption, the plaintiff would be able to convince the Court that the defendants were in the Colony and that they absconded; but if the affidavit was made recklessly—

Mr. Phillips understood that the plaintiff went to the office of Dunn, Malbye and Co., and asked two or three of the employees and they told him that Malbye had left the Colony—then that he was at his house, something like that. He asked to be allowed to put the plaintiff in the box, that all doubt might be removed from his Lordship's mind about the matter. He said that if it must be proved that one of the partners was within the jurisdiction. These affidavits were often made on insufficient grounds, if one of the defendants was not within the jurisdiction, they could not be used in the first place.

Mr. Phillips asked to be allowed to sit on the writ.

His Lordship did not think he should make a case like this, because he was not satisfied that the plaintiff had proved the facts present for.

The writ was ultimately amended to apply to E. H. Malbye, partner of the firm Dunn, Malbye, and Co., and the plaintiff put in the witness-box and gave evidence of having first paid tax and goods only; of which had been delivered to him, was a place goods dealer.

Judgment was given with costs against E. H. Malbye with immediate execution.

